

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 April 2024

DOCKET NUMBER: AR20230003850

APPLICANT REQUESTS: cancellation or remission of a \$2,937.32 Defense Finance and Accounting Service (DFAS) debt related to Veterans Affairs (VA) waiver of military pay.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- VA letter, 24 June 2016
- VA Form 21-8951 (Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances), 22 July 2016
- VA letter, 15 September 2016
- VA letter, 12 May 2017
- VA Form 21-8951, 30 May 2017
- VA Debt letter, 6 July 2018
- VA letter, 28 December 2018
- VA Form 21-8951, undated
- Self-authored letter, 20 January 2019
- VA Form 21-8951, 23 January 2019
- Orders Number 110-02
- Orders Number D132-08
- Orders Number 160-826
- Master Military Pay Account (MMPA)
- VA letter, 12 March 2019
- DFAS letter, 27 December 2022

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.

2. The applicant states:

a. In December 2022 she received a letter from DFAS-IN/Debt and Claims stating She owed \$2,937.32 due to a deduction on her Reserve pay record unrelated to pay and allowance entitlement. It says her debt is of waiver of military pay to receive VA benefits for Fiscal Year (FY) 2017.

b. On 12 March 2019, she received a letter from the VA stating the following "On 30 January 2019 we received a VA Form 21-8951 informing us of your election to waive military pay and allowances for drill pay FY 2017 with 34 training days in order to retain VA compensation. Based on response VA will not adjust award to reflect." Every year prior to FY 2017 that she filled out this VA form, her compensation was always reduced to meet the payments she received for drill pay. She does not know why this year was different. She was never notified that she still had a balance that needed to be paid until now.

3. A review of the applicant's official record shows the following:

a. On 25 November 2008, the applicant enlisted in the Army National Guard.

b. On 11 February 2014, the applicant reenlisted/extended her enlistment for a period of 6 years changing her expiration term of service to 24 November 2020.

c. On 14 November 2016, an Informal Physical Evaluation Board convened finding the applicant physical unfit and recommended her disposition be separation with severance pay. She concurred with the rating and waived a formal hearing.

d. On 20 April 2017, Orders Number D110-02 issued by the U.S. Army Physical Disability Agency (USAPDA) honorably discharged the applicant from the ARNG, effective 4 June 2015 with entitlement to severance pay.

e. On 12 May 2017, Orders Number D132-08 issued by the USAPDA amended Orders Number D110-02, dated 20 April 2017, changing the applicant's effective date of discharge to 4 June 2017.

f. On 4 June 2017, the applicant was honorably discharged from the ARNG by reason of being medically unfit for retention. She completed 8 years, 6 months, and 10 days of net service.

4. The applicant provides:

- a. VA letter dated 24 June 2016 wherein the VA provided VA Form 21-8951 to the applicant to make the necessary input for retroactive adjustment of the days she received drill pay.
- b. VA Form 21-8951 dated 22 July 2016 showing the applicant completed the form for a waiver of military pay and allowances for FY15 for 66 training days to retain VA compensation.
- c. VA letter dated 15 September 2016 wherein the VA notified the applicant they decided to adjust her benefits by 836.13 per month from 1 October 2015 to 7 December 2015 based on 66 drill days. The change resulted in a debt of \$1,839.49.
- d. VA letter dated 12 May 2017 wherein the VA provided VA Form 21-8951 to the applicant to make the necessary input for retroactive adjustment of the days she received drill pay.
- e. VA Form 21-8951 dated 30 May 2017 showing the applicant completed the form for a waiver of military pay and allowances for FY16 for 48 training days to retain VA compensation.
- f. VA Debt letter dated 6 July 2018 wherein the VA debt management center informed the applicant of their receipt of a \$1,057.27 debt payment for compensation and pension indebtedness.
- g. VA letter dated 28 December 2018 wherein the VA provided VA Form 21-8951 to the applicant to make the necessary input for retroactive adjustment of the days she received drill pay.
- h. VA Form 21-8951, undated showing the applicant completed the form for a waiver of military pay and allowances for FY17 for 35 training days to retain VA compensation. A handwritten note shows she was discharged on 4 June 2017.
- i. Self-authored letter dated 20 January 2019 showing the applicant wrote the letter to the evidence intake center notifying them that she was no longer in the ARNG and she had to scan and email to her former unit to be verified, corrected and signed.
- j. VA Form 21-8951 dated 23 January 2019 showing the applicant completed the form for a waiver of military pay and allowances for FY17 for 35 training days to retain VA compensation. A handwritten note shows she was discharged on 4 June 2017.
- k. Orders Number 160-826 issued by the Office of the Adjutant General showing the applicant was honorably discharged from the ARNG, effective 4 June 2017.

l. MMPA as of 30 September 2017 showing her drill wages of \$1,943.96.

m. VA letter dated 12 March 2019 wherein the applicant was notified the VA received a VA Form 21-8951 informing them of the election to waive military pay and allowances for drill pay for FY17 with 34 training days in order to retain her VA compensation. The VA would not adjust her award to reflect the receipt of drill pay for FY17. She would continue to receive \$879.36 monthly.

n. DFAS letter dated 27 December 2022 wherein the applicant was notified of a debt related to waiver of military pay to receive VA benefits for FY17 in the amount of \$2,937.32.

5. On 25 October 2023, in the processing of this case, the National Guard Bureau, Chief, Special Actions Branch, provided an advisory opinion stating in pertinent part:

a. Title 10 USC, section 12316 (b) states that a member of the Reserve of the Army, Navy, Air Force, Marine Corps or Coast Guard who because of the reserve's earlier military service is entitled to a pension or disability compensation, and who performs duty for which the reserve is entitled compensation, may elect to receive for the duty either.

(1) The pension or disability compensation to which the Reserve is entitled because of the Reserve's earlier military service.

(2) If the Reserve specifically waives those payments, the pay and allowances authorized by law for the duty that the Reserve is performing.

b. The [REDACTED] Army National Guard ([REDACTED] ARNG) conducted a review of the applicant's claim and concluded that she owes \$1,943.96 for FY17. She received 34 days of type 11 drill pay and 1 day of type 71 MA pay. The letter of indebtedness from the VA states the amount due is \$2,937.32, but her MMPAs for 2017 show a total gross income of \$1,943.96. There is an additional debt of \$993.36 that cannot be confirmed, but the [REDACTED] ARNG believes that DFAS and VA have documentation to explain the difference in dollar amount.

c. It is the recommendation of this office that the applicant's request be denied. While she does claim she signed to waive her military pay, a letter provided by the applicant from the VA states that they would not adjust her award, and that they would not deduct the debt for her drill pay from her VA benefit, meaning the debt would have to be paid through other means.

d. The opinion was coordinated with the [REDACTED] ARNG.

6. On 30 October 2023, the applicant was provided with a copy of the advisory opinion for comment or rebuttal. She did not respond.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the National Guard Bureau (NGB) Chief, Special Actions Branch advisory opinion, the Board concurred with the advising official recommendation of denial finding the applicant owes \$1,943.96 for fiscal year 20117 (FY17). Evidence in the records shows the applicant received 34 days of type 11 drill pay and 1 day of type 71 MA pay. The opine noted the letter of indebtedness from the VA states the amount due is \$2,937.32, but her MMPAs for 2017 show a total gross income of \$1,943.96.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's finance records, they agreed the burden of proof rest on the applicant, however, she did not provide any supporting documentation and her service record has insufficient evidence to support remission of her debt. The Board noted the applicant's claim stating she signed to waive her military pay. However, a letter provided by the applicant from the VA states that they would not adjust her award, and that they would not deduct the debt for her drill pay from her VA benefit, meaning the debt would have to be paid through other means. Based on the opine, the Board determined there is insufficient evidence to support cancelation or remission of a \$2,937.32 Defense Finance and Accounting Service (DFAS) debt related to Veterans Affairs (VA) waiver of military pay. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

4/11/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, USC, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Army Regulation 600-4 (Remission or Cancellation of Indebtedness) in accordance with the authority of Title 10 USC, section 4837, the Secretary of the Army may remit or cancel a Soldier's debt to the U.S. Army if such action is in the best interests of the United States. Indebtedness to the U.S. Army that may not be canceled under Title 10 USC, section 4837 when the debt is incurred while not on active duty or in an active status.

//NOTHING FOLLOWS//